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**IN THE UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, and the)	
PEOPLE OF THE STATE OF CALIFORNIA, ex)	
rel. the CALIFORNIA DEPARTMENT OF FISH)	
AND GAME, the CALIFORNIA REGIONAL)	
WATER QUALITY CONTROL BOARD, SAN)	Civil Action No.
FRANCISCO BAY REGION, and the)	
CALIFORNIA REGIONAL WATER QUALITY)	CONSENT DECREE
CONTROL BOARD, LAHONTAN REGION)	
Plaintiffs,)	
)	
v.)	
)	
KINDER MORGAN ENERGY PARTNERS, L.P.,)	
and SFPP L.P.,)	
)	
Defendants.)	

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CONSENT DECREE

A. WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior ("DOI"), and the United States Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"), and the People of the State of California, *Ex Relazione* the California Department of Fish and Game ("CDFG"), the California Regional Water Quality Control Board, San Francisco Bay Region ("SFBRWQCB"), and the California Regional Water Quality Control Board, Lahontan Region ("LRWQCB") (collectively the "Plaintiffs"), have filed a Complaint in this action concurrently with this Consent Decree against Defendants Kinder Morgan Energy Partners, L.P. ("KMEP") and SFPP, L.P. ("SFPP"). The Complaint alleges that Defendants are civilly liable for penalties, injunctive relief, removal costs and damages under federal law pursuant to the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., the federal Endangered Species Act ("ESA"), 16 U.S.C. § 1531, et seq., and the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2701 et seq., and under California law pursuant to the Porter Cologne Water Quality Control Act, California Water Code § 13000 et seq., the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code § 8670.1 et seq., and the California Fish and Game Code, with respect to three separate discharges of oil from April 2004 to April 2005 from oil pipelines that Defendants own or operate, as further described herein;

B. WHEREAS, on or about April 27, 2004, approximately 2,947 barrels of oil discharged from the Defendants' North Line pipeline into the Suisun Marsh and adjoining shorelines, near Suisun City, in Solano County, California (the "Suisun Discharge"). The Suisun Discharge resulted from external corrosion on the pipeline;

1 C. WHEREAS, the Plaintiffs allege that on or about February 7, 2005, approximately
2 1,831 barrels of oil discharged from the Defendants' Brisbane Terminal-Oakland pipeline,
3 reaching the Oakland Inner Harbor, near Oakland, in Alameda County, California (the "Oakland
4 Discharge"). The Oakland Discharge resulted from longitudinally oriented gouges on the
5 pipeline from excavation damage;
6

7 D. WHEREAS, the Plaintiffs allege that on or about April 1, 2005, approximately
8 300 gallons of oil discharged from the Defendants' pipeline into Summit Creek and other waters
9 of the United States in the Donner Lake watershed and adjoining shorelines, near Truckee, in
10 Placer County, California (the "Donner Discharge"). The Donner Discharge likely resulted from
11 dents on the pipeline or corrosion related to disbonded coating;
12

13 E. WHEREAS, on or about September 2005, CDFG received from Defendants a Soil
14 Assessment Report for the Donner Discharge that recommends natural attenuation and additional
15 assessment of the soil conditions as the remedial alternatives;
16

17 F. WHEREAS, CDFG agreed to allow some contamination from the Donner
18 Discharge to remain in place subject to natural attenuation, provided that Defendants conduct
19 continued sediment and water monitoring and, in the event that natural attenuation fails to
20 remediate the remaining contamination, conduct alternative remediation and containment;
21

22 G. WHEREAS, to resolve in accordance with this Consent Decree the claims
23 asserted in the Complaint regarding the Suisun Discharge, the Oakland Discharge and the Donner
24 Discharge, Defendants will pay the sum of three million, seven hundred and ninety-five
25 thousand, one hundred and thirty-five dollars (\$3,795,135.00) for civil penalties (at least
26 \$500,000.00 attributable to the Oakland Discharge), the sum of one hundred and eighteen
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1 thousand and six hundred and sixteen dollars (\$118,616.00) for remaining CDFG response costs
2 (Oakland = \$56,956.00; Suisun = \$39,194.00; Donner = \$22,466.00), the sum of fifty-one
3 thousand and four hundred dollars (\$51,400.00) for future remediation monitoring costs of
4 CDFG for the Donner Discharge, the sum of one million, one hundred and fifty-one thousand
5 and ninety-nine dollars (\$1,151,099.00) related to the Suisun discharge for natural resource
6 damages, the sum of twenty-thousand dollars (\$20,000.00) to the National Fish and Wildlife
7 Foundation to fund projects to restore resources damaged by the Donner Discharge, the sum of
8 sixteen thousand, ninety-nine dollars (\$16,099.00) to NOAA for reimbursement of its Natural
9 Resource Damage Assessment costs associated with the Suisun Discharge, the sum of one
10 hundred forty-thousand four hundred and eighty-four dollars (\$140,484.00) to the CDFG for
11 unreimbursed Natural Resource Damage Assessment costs incurred in connection with the
12 Suisun Discharge, and any reasonable unreimbursed Natural Resource Damage Assessment costs
13 incurred by DOI with respect to the Suisun Discharge, perform specified injunctive relief related
14 to enhancement of pipeline spill prevention and response preparation to prevent future violations
15 of the CWA, and satisfy all other terms of this Consent Decree.

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20 H. WHEREAS, Defendants have taken the following steps to decrease the likelihood
21 of other such discharges:

22 (1) Installed new pipeline within the North Line system that avoids routing
23 through most of the Suisun Marsh;

24 (2) In 2005, conducted a caliper in-line inspection and a high-resolution Axial
25 Flaw Detection ("AFD") inspection survey of the entire Oakland to Brisbane 12" Pipeline, on
26 which the Oakland Discharge occurred. The AFD tool had the magnetic field rotated 90 degrees,
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1 which better enabled it to detect and identify axially oriented features that may be present in the
2 pipeline. Based on data from the caliper and AFD inspections, Defendants excavated the
3 pipeline at two dig locations to visually inspect for mechanical damage and repaired or replaced
4 the pipeline at both of those locations;
5

6 (3) Cut out a 14.5 ft. long section of pipeline at the location of the Donner
7 Discharge and replaced with new pre-tested pipe;
8

9 (4) Reviewed all data acquired during a 1997 in-line inspection ("ILI") survey
10 of the entire 120 mile long pipeline system from Rocklin, California, to Reno, Nevada, on which
11 the Donner Discharge occurred, to identify and size dents that might exist. The 1997 ILI surveys
12 consisted of Electronic Geometry Pig surveys and Corrosion Detection Pig surveys. Pursuant to
13 this review, Defendants identified anomalies at twenty locations, excavated nineteen of the
14 locations to inspect for potential damage, determined that one anomaly had already been replaced
15 due to a relocation project and repaired or replaced the pipe at fifteen of the locations. The
16 balance of physically inspected pipe locations did not meet repair criteria and were recoated after
17 inspection;
18
19

20 (5) Performed high resolution caliper ILI surveys on the entire 120 mile long
21 Rocklin to Reno pipeline system to better identify mechanical damage and corrosion.
22 Defendants have excavated the pipeline for visual inspection in seventeen locations, which
23 resulted in Defendants repairing or replacing the pipeline in at least twelve of those locations.
24 Additionally, a high resolution Magnetic Flux Leakage Survey and Transverse Flux Inspection
25 tools were run in November 2006;
26
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1 (6) Hired and trained at least ten (10) additional employees to be present at all
2 excavations within 10 feet of the center line of any Pacific Operations Unit pipeline and
3 incorporated this requirement for qualified inspector presence at excavations into its Integrity
4 Management Plan;
5

6 (7) Created a system to integrate and overlay all data for the entire Pacific
7 Operations Unit from close interval surveys, ILI surveys, excavations, visual inspections and
8 other pipeline integrity evaluation into a Pipeline Open Database System to identify areas along
9 the pipeline system where corrosion, mechanical damage, disbonded coating or other anomalies
10 might exist that require further investigation, repair or replacement to prevent future discharges;
11

12 (8) Entered into a Consent Agreement with the United States Department of
13 Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA"), in the
14 matter of Kinder Morgan Energy Partners, L.P., CPF No. 5-2005-5025H (the "PHMSA Consent
15 Agreement"), in which KMEP agreed to address integrity threats along the entire 3,900-mile
16 Pacific Operations Unit to prevent failures, including failures caused by outside force damage
17 and corrosion. The specific terms of the agreement are set forth in the PHMSA Consent
18 Agreement, a copy of which is attached hereto as Attachment A;
19

20 (9) Established an internal company procedure to run the same quality ILI
21 through each pipeline segment and apply the same dig criteria (for investigation and validation)
22 and repair criteria for each portion of any pipeline segment regardless of whether an identified
23 condition is in an area that is designated as "could affect an 'High Consequence Area'" within
24 the meaning of 49 C.F.R. 195.452.
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1 I. WHEREAS, Defendants have revised their spill notification procedures in their
2 spill response plans to improve the promptness of notification to federal and state authorities;

3
4 J. WHEREAS, Defendants do not admit any liability to the Plaintiffs arising out of
5 the transactions or occurrences alleged in the Complaint.

6 K. WHEREAS, the Parties recognize, and the Court by entering this Consent Decree
7 finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid
8 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public
9 interest.
10

11 NOW, THEREFORE, before taking testimony and without the adjudication or
12 admission of any issue of fact or law except as provided in Section I, below, and with the consent
13 of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:
14

15 **I. JURISDICTION AND VENUE**

16 1. This Court has jurisdiction over the subject matter of the United States'
17 claims in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 (original jurisdiction),
18 Sections 1002(a), (b)(1)(A) and (b)(2)(A), 1006, 1017(b) of OPA, 33 U.S.C. §§ 2702(a),
19 (b)(1)(A) & (b)(2)(A), 2706, and 2717(b), and Sections 309(b), 311(b)(7)(E) and 311(n) of the
20 CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E) and 1321(n). The Court has supplemental
21 jurisdiction over the subject matter of the CDFG, SFBRWQCB and LRWQCB's claims pursuant
22 to 28 U.S.C. § 1367(a) because these claims are so related to the federal claims that they form
23 part of the same case or controversy. This Court also has jurisdiction over the subject matter of
24 the CDFG's OPA claim under 33 U.S.C. § 2717(b). The Court has personal jurisdiction over the
25 Parties to this Consent Decree. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and
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1 1395(a), because the Defendants reside in this District as determined by 28 U.S.C. § 1391(c).
2 For the purposes of this Consent Decree, or any action to enforce this Consent Decree,
3 Defendants waive any right to a different venue, including under California Water Code § 13361,
4 and consent to the Court's jurisdiction over this Decree or such action and over Defendants, and
5 consent to venue in this judicial district.
6

7 2. Notice of the commencement of this action has been given to the state of
8 California, as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
9

10 II. APPLICABILITY

11 3. The obligations of this Consent Decree apply to and are binding on the
12 United States, the People of the State of California, *Ex Relatone* the CDFG, SFBRWQCB,
13 LRWQCB, and on the Defendants, and any successors, assigns or other entities or persons
14 otherwise bound by law.
15

16 4. No transfer of ownership or operation of any Facility, whether in
17 compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their
18 obligation to ensure that the terms of the Decree are implemented. Defendants' transfer of
19 ownership or operation of any portion of the Facility within the Pacific Operations Unit to any
20 other person must be conditioned on the transferee's agreement to undertake the obligations
21 required by Section VII (Injunctive Relief) of this Consent Decree, as provided in a written
22 agreement between any Defendant and the proposed transferee, enforceable by the Plaintiffs as
23 third-party beneficiaries of such agreement. At least thirty (30) days prior to such transfer,
24 Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall
25 simultaneously provide written notice of the prospective transfer, together with a copy of the
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1 proposed written agreement, to EPA Region 9, to the United States Department of Justice, and to
2 the CDFG in accordance with Section XIII of this Decree (Notices). Any transfer of ownership
3 or operation of all or a portion of the Facility without complying with this Paragraph constitutes a
4 violation of this Consent Decree.
5

6 5. Defendants shall provide a copy of this Consent Decree to all officers, and
7 employees and agents whose duties might reasonably include supervision of compliance with any
8 provision of this Consent Decree, including supervision of any contractor retained to perform
9 work required under this Consent Decree. Defendants shall condition any contract to perform
10 any work covered by this Consent Decree on performance of the work in conformity with the
11 terms of this Consent Decree.
12

13 6. In any action to enforce this Consent Decree, Defendants shall not raise as
14 a defense the failure by any of its officers, directors, employees, agents, or contractors to take any
15 actions necessary to comply with the provisions of this Consent Decree.
16

17 **III. DEFINITIONS**

18 7. Terms used in this Consent Decree that are defined or used in the CWA
19 and OPA shall have the meanings assigned to them in such statute, unless otherwise provided in
20 this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the
21 following definitions shall apply:
22

23 A. "Complaint" shall mean the complaint filed by Plaintiffs in this
24 action.
25

26 B. "Consent Decree" or "Decree" shall mean this document.
27
28

1 C. "Covered Waters" shall mean all waters within the meaning of 33
2 U.S.C. § 1362(7) and all waters of the State within the meaning of California Water Code §
3 13050(e), except ground waters.
4

5 D. "Day" shall mean a calendar day unless expressly stated to be a
6 working day. In computing any period of time under this Consent Decree, where the last day
7 would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of
8 business of the next working day.
9

10 E. "Defendants" shall mean KMEP and SFPP. For the purposes of
11 Paragraphs 41, 44, 45 and 47 of Section XI of this Consent Decree, the Defendants' directors,
12 officers, and employees acting within their scope of employment, in addition to Kinder Morgan
13 Inc., Kinder Morgan Management LLC, Kinder Morgan G.P., Inc., and Kinder Morgan
14 Operating L.P. "D", shall be considered "Defendants" and shall not be considered "third parties."
15

16 F. "Facility" or "Facilities," as referenced in the Consent Decree,
17 shall include all KMEP owned or SFPP operated pipelines and associated pumps, valves and
18 pipeline operational equipment in the Pacific Operations Unit as of the date of lodging this
19 Consent Decree, or such pipelines added to the Pacific Operations Unit during the pendency of
20 this Consent Decree. The "Pacific Operations Unit" currently comprises approximately 3,900
21 miles of hazardous liquid petroleum pipelines owned or operated by KMEP or SFPP in Arizona,
22 California, Nevada, New Mexico, Oregon and Texas. For purposes of this Consent Decree, the
23 Pacific Operations Unit does not include the Carbon Dioxide or Cypress systems.
24

25 G. "HCA" shall have the same meaning as the meaning set forth in 49
26 C.F.R. § 195.450.
27
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1 H. "Natural Resources" shall have the meaning set forth in OPA
2 § 1001(20), 33 U.S.C. § 2701(20), and include land, fish, wildlife, biota, air, water, groundwater,
3 drinking water supplies, and other such resources belonging to, managed by, held in trust by,
4 appertaining to, or otherwise controlled by the United States or the state of California, and shall
5 also mean the services provided by such resources to other resources or to humans.
6

7 I. "Natural Resource Trustees" or "Trustees" mean those federal and
8 state agencies or officials designated or authorized pursuant to the CWA, OPA, or state law to act
9 as Trustees for the Natural Resources managed by, controlled by, or appertaining to the United
10 States or the state of California. Specifically, as used in this Consent Decree, these terms shall
11 mean the U.S. Fish and Wildlife Service and the CDFG.
12

13 J. "Paragraph" shall mean a portion of this Consent Decree identified
14 by an Arabic numeral.
15

16 K. "Parties" shall mean the United States, the People of the State of
17 California, *Ex Relatione* the CDFG, SFBRWQCB, LRWQCB, KMEP and SFPP.
18

19 L. "Plaintiffs" shall mean the United States, the People of the State of
20 California, *Ex Relatione* the CDFG, SFBRWQCB and LRWQCB.
21

22 M. "Section" shall mean a portion of this Consent Decree identified by
23 a Roman numeral.
24

25 N. "Spill Prevention, Response or Reporting Practices" shall mean
26 those measures or methods adopted by Defendants as described in this Consent Decree, or as
27 currently required by the PHMSA Consent Agreement, or any other protocol of the Defendants
28

1 that is intended to prevent discharges of oil from Defendants' Facilities or intended to improve
2 response capabilities, and ensure more accurate, timely reporting of oil discharges.

3
4 O. "Spills" shall mean the Suisun Discharge, the Oakland Discharge
5 and the Donner Discharge.

6 P. "United States" shall mean the United States of America, acting on
7 behalf of EPA, DOI and NOAA.

8 9 IV. CIVIL PENALTIES

10 8. Within thirty (30) days after the Effective Date of this Consent Decree,
11 Defendants shall pay civil penalties in the amount of three million seven hundred and ninety-five
12 thousand one hundred and thirty-five dollars (\$3,795,135.00) to the Plaintiffs as follows:

13
14 A. For alleged violations of the CWA and the California statutes set
15 forth in Paragraph A of the foregoing recitals, Defendants shall pay a civil penalty of three
16 million seven hundred and eighty thousand five hundred and fifty-nine dollars (\$3,780,559.00),
17 as follows:

18
19 (1) To the United States, one million five hundred and eighty-
20 five thousand eight hundred and ninety-three dollars (\$1,585,893.00), to be paid into an escrow
21 account bearing interest on commercially reasonable terms, in a federally-chartered bank (the
22 "United States Escrow Account") within 15 business days after Defendants receive notice that
23 this Consent Decree has been lodged. Such monies shall remain in escrow until entry of the
24 Decree. If the Decree is not entered by the court, and the time for any appeal of that decision has
25 run, or if the court's denial of entry is upheld on appeal, the monies placed in escrow, together
26 with accrued interest thereon, shall be returned to Defendants. If the Decree is entered by the
27
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1 court, Defendants shall, within 15 days thereof, cause the monies (including all accrued interest)
2 in the United States Escrow Account to be released and disbursed to the United States. Payment
3 shall be made by Fedwire Electronic Funds Transfer ("EFT") to the United States Department of
4 Justice, in accordance with instructions provided to Defendants, following lodging of the
5 Consent Decree, by the Financial Litigation Unit of the Office of the United States Attorney for
6 the Eastern District of California. The payment shall reference the Civil Action Number
7 assigned to this case and Department of Justice Case Number ("DOJ No." 90-5-1-1-08427, and
8 U.S. Coast Guard reference number FPN A04010, and shall specify that the payments are made
9 toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33
10 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8). Any funds
11 received after 11:00 a.m. Eastern Time shall be credited on the next business day. Defendants
12 shall simultaneously provide to the United States notice of this payment by submitting written
13 notice of the same and a copy of any transmittal documentation to the United States in
14 accordance with Section XIII of this Consent Decree (Notice), and to the following:

15
16
17
18
19 LT Carolyn Leonard-Cho
20 National Pollution Funds Center
21 4200 Wilson Boulevard, Suite 1000
22 Arlington, Virginia 22203-1804

23 Commander Thomas Beistle
24 United States Coast Guard
25 Office of Claims and Litigation
26 2100 Second Street, S.W.
27 Washington, D.C. 20593-0001

28 (2) To the SFBRWQCB, one million three hundred sixty
thousand four hundred and forty-eight dollars (\$1,360,448.00), to be paid into an escrow account
bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Regional

1 Water Board Escrow Account") within 15 business days after Defendants receive notice that this
2 Consent Decree has been lodged. Such monies shall remain in escrow until entry of the Decree.
3
4 If the Decree is not entered by the court, and the time for any appeal of that decision has run, or if
5 the court's denial of entry is upheld on appeal, the monies placed in escrow, together with
6 accrued interest thereon, shall be returned to Defendants. If the Decree is entered by the court,
7 Defendants shall, within 15 days thereof, cause the monies (including all accrued interest) in the
8 Regional Water Board Escrow Account to be released and disbursed to the SFBRWQCB.
9
10 Payment shall be made by cashier's or certified check payable to the "State Water Resources
11 Control Board-Waste Discharge Permit Fund" and sent to:

12 Bruce H. Wolfe
13 SFBRWQCB
14 1515 Clay Street, Suite 1400
15 Oakland, CA 94612

16 (3) To the CDFG, eight hundred and thirty-four thousand two
17 hundred and eighteen dollars (\$834,218.00), to be paid into an escrow account bearing interest on
18 commercially reasonable terms, in a federally-chartered bank (the "CDFG Escrow Account")
19 within 15 business days after Defendants receive notice that this Consent Decree has been
20 lodged. Such monies shall remain in escrow until entry of the Decree. If the Decree is not
21 entered by the court, and the time for any appeal of that decision has run, or if the court's denial
22 of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon,
23 shall be returned to Defendants. If the Decree is entered by the court, Defendants shall, within 15
24 days thereof, cause the monies (including all accrued interest) in the CDFG Escrow Account to
25 be released and disbursed to the CDFG. Payment shall be made by cashier's check or certified
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1 check payable to the California Department of Fish and Game. The check shall reference the
2 "Kinder Morgan Spills" and reflect that it is a payment to the Fish and Wildlife Pollution
3 Account. The check shall be sent by certified mail to:
4

5 California Department of Fish and Game
6 Office of Spill Prevention and Response
7 Attn: Stephen Sawyer, Assistant Chief Counsel
8 1700 "K" Street, Suite 250
9 Sacramento, CA 95814

10 B. Defendants shall pay a civil penalty in the amount of fourteen
11 thousand five hundred seventy six dollars (\$14,576.00), to be paid within 15 business days after
12 Defendants receive notice that this Consent Decree has been lodged into an escrow account
13 bearing interest on commercially reasonable terms, in a federally-chartered bank (the "ESA
14 Escrow Account"). Such monies shall remain in escrow until entry of the Decree. If the Decree
15 is not entered by the court, and the time for any appeal of that decision has run, or if the court's
16 denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest
17 thereon, shall be returned to Defendants. If the Decree is entered by the court, Defendants shall,
18 within 15 days thereof, cause the monies (including all accrued interest) in the ESA Escrow
19 Account to be released and disbursed to the United States for the claims alleged by the United
20 States for violations of the Endangered Species Act. Said civil penalty shall be used for the
21 purposes authorized by 16 U.S.C. § 1540(d). Payment shall be made by EFT to the United States
22 Department of Justice in accordance with instructions provided to Defendants, following lodging
23 of the Consent Decree, by the Financial Litigation Unit of the Office of the United States
24 Attorney for the Eastern District of California. At the time of making such payment, Defendants
25 shall send a transmittal letter to the following address, indicating that the EFT has occurred and
26
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1 shall include the following reference: Kinder Morgan Energy Partners, Organization Code
2 99000, Lacey Act Reward Account: 14X1611-ECV.

3
4 Law Enforcement
5 Attention: Scott Heard, Regional Agent in Charge
6 U.S. Fish and Wildlife Service
7 2800 Cottage Way
8 Sacramento, CA 95826-1846

9 C. Defendants shall not deduct the amounts paid under this Section in
10 calculating federal income tax.

11 **V. CDFG RESPONSE AND REMEDIATION MONITORING COSTS**

12 9. Within thirty (30) days after the Effective Date of this Consent Decree,
13 Defendants shall pay twenty-two thousand four hundred and sixty-six dollars (\$22,466.00) to
14 CDFG for response costs associated with the Donner Discharge. Payment shall be made by
15 cashier's or certified check payable to the California Department of Fish and Game. The check
16 shall reference the Kinder Morgan Donner Discharge and reflect that it is a payment to the Fish
17 and Wildlife Pollution Account. CDFG shall deposit the money into the Oil Pollution Response
18 and Restoration Subaccount. The check shall be sent by certified mail to the address directed in
19 Paragraph 8(A)(3), above.
20

21 10. Within thirty (30) days after the Effective Date of this Consent Decree,
22 Defendants shall pay ninety-six thousand one hundred and fifty dollars (\$96,150.00) to CDFG for
23 response costs associated with the Suisun (\$39,194) and Oakland (\$56,956) Discharges.
24 Payment shall be made by cashier's or certified check payable to the California Department of
25 Fish and Game. The check shall reference the Kinder Morgan Suisun and Oakland Discharges
26
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1 and reflect that it is a payment to the Oil Spill Response Trust Fund. The check shall be sent by
2 certified mail to the address directed in Paragraph 8(A)(3), above.

3
4 11. Within thirty (30) days after the Effective Date of this Consent Decree,
5 Defendants shall pay fifty-one thousand four hundred dollars (\$51,400.00) to CDFG for
6 remediation monitoring associated with the Donner Discharge. Payment shall be made by
7 cashier's or certified check payable to the California Department of Fish and Game. The check
8 shall reference the Kinder Morgan Donner Discharge and reflect that it is a payment to the Fish
9 and Wildlife Pollution Account. CDFG shall deposit the money into the Oil Pollution Response
10 and Restoration Subaccount. The check shall be sent by certified mail to the address directed in
11 Paragraph 8(A)(3), above.
12

13 **VI. NATURAL RESOURCE DAMAGES PAYMENTS**

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15 12. Within thirty (30) days after this Decree has been lodged with this Court,
16 Defendants shall deposit the amount of one million one hundred and fifty-one thousand and
17 ninety-nine dollars (\$1,151,099.00) into an escrow account bearing interest on commercially
18 reasonable terms, in a federally-chartered bank (hereinafter, the "Escrow Account"). If the
19 Decree is not entered by this Court, and the time for any appeal of that decision has run, or if this
20 Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued
21 interest thereon, shall be returned to Defendants. If the Decree is entered by this Court,
22 Defendants shall, within thirty (30) days of the Effective Date, cause the monies in the Escrow
23 Account, and all accrued interest thereon, to be paid to DOI, on behalf of the Natural Resource
24 Trustees, for the purposes set forth in Paragraph 13(C), below. Such payment shall be made by
25 EFT to the United States Department of Justice in accordance with instructions provided to
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1 Defendants, following lodging of the Consent Decree, by the Financial Litigation Unit of the
2 Office of the United States Attorney for the Eastern District of California. Defendants shall send
3 a transmittal letter indicating that the EFT has occurred, to the Parties in accordance with Section
4 XIII of this Decree ("Notices") and to:

6 Department of the Interior
7 Natural Resource Damage Assessment
8 and Restoration Program
9 Attention: Restoration Fund Manager
10 1849 "C" Street, N.W., Mail Stop 4449
11 Washington, D.C. 20240

12 13. The EFT and transmittal letter shall reflect that the payment is being made
13 to the "Natural Resources Damage Assessment and Restoration Fund, Account No. 14X5198 -
14 KINDER MORGAN SUISUN OIL SPILL." DOI will assign these funds a special project
15 number to allow the funds to be maintained as a segregated account within the Department of the
16 Interior Natural Resource Damage Assessment and Restoration Fund, Account No.
17 14X5198**** (the "KINDER MORGAN SUISUN OIL SPILL NRD Account").

18 A. DOI shall, in accordance with law, manage and invest funds in the
19 KINDER MORGAN SUISUN OIL SPILL NRD Account and any return on investments or
20 interest accrued on the Account for use by the Natural Resources Trustees in connection with
21 Restoration of Natural Resources affected by the Spill. DOI shall not make any charge against
22 the KINDER MORGAN SUISUN NRD Account for any investment or management services
23 provided.
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1 B. DOI shall hold all funds in the KINDER MORGAN SUISUN
2 NRD Account, including return on investments or accrued interest, subject to the provisions of
3 this Decree.
4

5 C. The Natural Resources Trustees commit to the expenditure of these
6 funds for the design, implementation, permitting (as necessary), monitoring, and oversight of
7 restoration projects and for the costs of complying with the requirements of the law to conduct a
8 restoration planning and implementation process. The Natural Resource Trustees plan to use the
9 funds for restoration, enhancement, and protection of resources injured by the Suisun Discharge
10 and for oversight of these restoration projects. The allocation of funds for specific projects will
11 be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which
12 public notice, opportunity for public input, and consideration of public comment will be
13 provided. The Trustees jointly retain the ultimate authority and responsibility to use the funds in
14 the KINDER MORGAN SUISUN NRD Account to restore Natural Resources in accordance
15 with applicable law, this Consent Decree, and any Memorandum of Understanding (MOU)
16 between them.
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20 14. Within thirty (30) days after the Effective Date of this Consent Decree,
21 Defendants shall pay twenty thousand dollars (\$20,000.00) to the National Fish and Wildlife
22 Foundation to fund projects to restore resources damaged by the Donner Discharge. Payment is
23 to be made by cashier's or certified check payable to the National Fish and Wildlife Foundation.
24 The check or money order shall be sent by certified mail or overnight delivery to the attention of
25 counsel for the CDFG at the address set forth below:
26

27 State of California Department of Fish and Game
28

1 Office of Spill Prevention and Response
2 Attn: Stephen Sawyer, Assistant Chief Counsel
3 1700 "K" Street, Suite 250
4 Sacramento, CA 95814

5 The check shall reference the Donner Discharge and reflect that it is a payment to the
6 Environmental Fund for Habitat and Incident Specific Restoration Projects. The National Fish
7 and Wildlife Foundation shall deposit the funds into the Riverine Subaccount of the
8 Environmental Fund for Habitat and Incident Specific Restoration Projects. At the time of
9 payment, Defendants shall simultaneously send written notice of payment and a copy of any
10 transmittal documentation to Plaintiffs in accordance with Section XIII of this Consent Decree
11 (Notices).
12

13 15. Within thirty (30) days of the latter of the Effective Date of this Consent
14 Decree or delivery of an invoice, with supporting back-up documentation, to Defendants,
15 Defendants shall pay to DOI any reasonable unreimbursed Natural Resource Damage
16 Assessment costs that DOI has incurred through the Effective Date of this Consent Decree. Any
17 such amount payable to DOI shall be transmitted to DOI, Natural Resource Damage Assessment
18 and Restoration Fund, Account No. 14X5198- KINDER MORGAN SUISUN NRD Account by
19 EFT to the U.S. Department of Justice in accordance with instructions that the Financial
20 Litigation Unit of the U.S. Attorney's Office for the Eastern District of California shall provide
21 to Defendants following the Effective Date of this Consent Decree. At the time of payment,
22 Defendants shall simultaneously send written notice of payment and a copy of any transmittal
23 documentation (which shall reference DOJ No. 90-5-1-1-08427) to the Parties in accordance with
24 Section XIII of this Decree ("Notices").
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1 16. Within thirty (30) days of the date of the Effective Date of this Consent
2 Decree, Defendants shall pay the sum of sixteen thousand, ninety-nine dollars (\$16,099.00) to
3 NOAA for reimbursement of its Natural Resource Damage Assessment costs associated with the
4 Suisun Discharge. Payment shall be made by EFT to the U.S. Department of Justice in
5 accordance with instructions that the Financial Litigation Unit of the U.S. Attorney's Office for
6 the Eastern District of California shall provide to Defendants following the Effective Date of this
7 Consent Decree. At the time of payment, Defendants shall simultaneously send written notice of
8 payment and a copy of any transmittal documentation (which shall reference DOJ No. 90-5-1-1-
9 08427) to the Parties in accordance with Section XIII of this Decree ("Notices").

12 17. Within thirty (30) days of the latter of the Effective Date of this Decree or
13 the delivery of an invoice, with supporting back-up documentation, to Defendants, Defendants
14 shall pay to CDFG reasonable unreimbursed Natural Resource Damage Assessment costs that it
15 has incurred in connection with the Suisun discharge in the amount of one hundred and forty
16 thousand and four hundred and eighty-four dollars (\$140,484.00). Payment is to be made by
17 cashier's or certified check payable to the California Department of Fish and Game. The check or
18 money order shall be sent by certified mail or overnight delivery to:

21 State of California Department of Fish and Game
22 Office of Spill Prevention and Response
23 Attn: Stephen Sawyer, Assistant Chief Counsel
24 1700 "K" Street, Suite 250
 Sacramento, CA 95814

25 The check shall reference the "Kinder Morgan Spills" and reflect that it is a payment to the Oil
26 Spill Response Trust Fund.

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VII. INJUNCTIVE RELIEF

18. From the Effective Date until termination of this Consent Decree, EPA and Defendants shall meet quarterly at the EPA Region IX offices in San Francisco, California, to discuss the implementation of Defendants' Spill Prevention, Response or Reporting Practices, and make modifications as agreed by the EPA and the Defendants. At such meetings, Defendants shall make available, on request, all existing information and reports relevant to evaluating Defendants' implementation of their Spill Prevention, Response or Reporting Practices, including integrity management plans or any assessment or evaluation of pipelines within the Defendants' Pacific Operating Unit. To the extent these meetings involve implementation of integrity management plan requirements under 49 C.F.R Part 195 or any actions conducted pursuant to the PHMSA Consent Agreement, Defendants shall not object to participation in such meetings by PHMSA or its representative. Defendants may request additional meetings with EPA at any time without restriction. This Paragraph does not waive or supersede any authority that EPA may have to obtain information from Defendants related to the Spills or other matters within its jurisdiction or authority. EPA may, in its sole discretion, cancel or postpone any quarterly meeting required by this Consent Decree by written notice to Defendants.

19. From the Effective Date until the termination of this Consent Decree, Defendants shall not make material changes to their Spill Prevention, Response or Reporting Practices within their Pacific Operating Unit that, as may be determined by EPA, are less protective of Covered Waters, without prior written approval from EPA. For the purpose of this

1 Consent Decree, "material changes" to Spill Prevention, Response or Reporting Practices shall
2 mean:

3
4 1) the modification of any program with the effect of reducing the presence of qualified
5 personnel at any excavation near any portion of the pipeline;

6 2) the modification of any obligations or schedules stated in or approved pursuant to the
7 PHMSA Consent Agreement as of December 31, 2006;

8 3) the de-classification as of any portion of pipeline that, as of December 31, 2006,
9 Defendants have designated as "could affect a" HCA, in accordance with 49 C.F.R. § 195.452.

10 4) the modification of pipeline assessment and repair criteria established in Section 7
11 (Pipeline Repair Criteria), Section 8 (Continuing Assessment and Analysis), and Appendix E
12 (Repair Criteria) of Defendants' Integrity Management Program, where such modification might
13 result in: a) extending the timeframes or making less stringent the criteria for pipeline
14 excavation, repair or replacement; b) changing repair and other remediation methods; c) reducing
15 the likelihood that a condition would be discovered or the timeliness of such discovery; or d)
16 reducing the validity of ILI assessment results; or
17

18 5) the modification of the procedure to apply the same inspection, dig and repair criteria
19 for each portion of a pipeline segment regardless of whether an identified condition is in an area
20 that is designated as "could affect" a HCA pursuant to 49 C.F.R. § 195.452.

21
22 20. Defendants shall provide EPA semi-annually, beginning 180 days from the
23 Effective Date of this Consent Decree, a listing and description of any substantive changes
24 Defendants have made regarding their Spill Prevention, Response or Reporting Practices in the
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1 Pacific Operations Unit within the previous twelve (12) months, and upon EPA's written request,
2 provide a copy of the Defendants' written policies or practice where such changes were made.
3

4 21. Within 90 days after notice from EPA that Defendants have made a
5 material change to their Spill Prevention, Response or Reporting Practices in the Pacific
6 Operations Unit in a manner that EPA has determined to be less protective of Covered Waters, or
7 within such other time as agreed by EPA, Defendants shall implement its former Spill
8 Prevention, Response or Reporting Practices in the Pacific Operations Unit, or shall implement
9 modifications that EPA determines are the substantive equivalent of former Spill Prevention,
10 Response or Reporting Practices in the Pacific Operations Unit. To the extent that the
11 Defendants' Spill Prevention, Response or Reporting Practices in the Pacific Operations Unit are
12 required by the PHMSA Consent Agreement, any determinations by EPA will be made in
13 consultation with PHMSA.
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16 22. Within ninety (90) days of the Effective Date of this Consent Decree,
17 Defendants shall designate Line Sections 11, 12, and 13 of the SFPP Rocklin-Reno pipeline as
18 "could affect" an HCA, in accordance with 49 C.F.R. § 195.452, thereby subjecting those
19 portions of the pipeline to those regulations.
20

21 23. Within ninety (90) days of the Effective Date of this Consent Decree,
22 Defendants shall request that PHMSA approve a modification to the Close Interval Survey
23 ("CIS") schedule approved pursuant to the PHMSA Consent Agreement to ensure that the CIS
24 for Line Sections 11, 12 and 13 of the SFPP Rocklin-Reno pipeline are completed by December
25 31, 2008. Additionally, within ninety (90) days, Defendants shall request that PHMSA approve a
26 modification to the CIS schedule approved pursuant to the PHMSA Consent Agreement to
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1 ensure that the CIS for Line Sections 27, 95 and 103 (located near Mococo Marsh) are completed
2 by December 31, 2010.

3 4 **VIII. STIPULATED PENALTIES**

5 24. If Defendants fail to make any payments required under Section IV (Civil
6 Penalties), Section V (CDFG Response and Remediation Monitoring Costs) or Section VI
7 (Natural Resource Damages Payments) when due, Defendants shall pay a stipulated penalty of
8 fifteen hundred dollars (\$1,500.00) to each Plaintiff not paid in full, per day for each day that the
9 payment is late. Late payment of the obligations stated in Section IV (Civil Penalties), Section V
10 (CDFG Response and Remediation Monitoring Costs) and Section VI (Natural Resource
11 Damages Payments) shall be made in accordance with payment instructions in those Sections.
12 Stipulated Penalties under this Paragraph shall be paid as stated herein. All transmittal
13 correspondence shall state that any such payment is for late payment of the settlement payments
14 due under this Consent Decree, or for stipulated penalties, as applicable. Payments of stipulated
15 penalties under this Paragraph to the United States shall be made in accordance with the payment
16 instructions in Paragraph 29. Payments to the CDFG for stipulated penalties under this
17 Paragraph shall be made in accordance with Paragraph 30. On demand, payments to the
18 SFBRWQCB for stipulated penalties under this Paragraph shall be made by cashier's or certified
19 check payable to the "State Water Resources Control Board - Waste Discharge Permit Fund" and
20 sent to the individual identified in Paragraph 8(A)(2), shall reference the Civil Action Number
21 assigned to this case and specify that the payment is for stipulated penalties. Payments for
22 stipulated penalties under this Paragraph based on the late payment of the obligation stated in
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Paragraph 8(B) shall be made in accordance with Paragraph 8(B), shall reference the Civil Action Number assigned to this case and that the payment is for stipulated penalties.

25. Defendants shall be liable for Stipulated Penalties to the United States for all other violations of this Consent Decree, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any injunctive relief, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree. Stipulated Penalties under this Paragraph shall be paid in accordance with Paragraph 29 below. Stipulated Penalties owing initially to the any agency of the state of California under this Consent Decree may be demanded by the EPA if the Stipulated Penalty arises from the untimely payment of penalties pursuant to Paragraph 8 of this Consent Decree and the respective agency of the state of California has neither demanded or received payment of the Stipulated Penalty.

Penalty Per Violation Per Day:	Period of Noncompliance:
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

26. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due, and shall continue to accrue until performance is satisfactorily completed. Stipulated Penalties shall accrue simultaneously for separate violations of this

1 Consent Decree. Defendants shall pay any Stipulated Penalty within thirty (30) days of receiving
2 a written demand.

3
4 27. Any Plaintiff may, in the unreviewable exercise of its respective
5 discretion, reduce or waive Stipulated Penalties otherwise due to it under this Consent Decree.

6 28. Stipulated Penalties shall continue to accrue as provided in Paragraphs 24
7 and 25, above, during any Dispute Resolution, with interest on accrued stipulated penalties
8 payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28
9 U.S.C. § 1961, but need not be paid until the following:

10
11 A. If the dispute is resolved by agreement, Defendants shall pay
12 accrued penalties determined to be owing, together with interest, to the United States within
13 thirty (30) days of the effective date of that agreement;

14
15 B. If the dispute is submitted to the Court and the United States
16 prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court
17 to be owing, together with interest, within sixty (60) days of receiving the Court's decision or
18 order, except as provided in Subparagraph C, below;

19
20 C. If any Party appeals the District Court's decision, Defendants shall
21 pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days
22 of receiving the final appellate court decision.

23
24 29. Defendants shall, as directed by the EPA or DOI in a demand, pay
25 stipulated penalties due and owing by EFT in accordance with instructions to be provided by the
26 Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of California, or
27
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1 by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice,"
2 referencing DOJ No. 90-5-1-1-08427, and delivered to:

3
4 United States Attorney, Financial Litigation Unit
5 Eastern District of California
6 450 Golden Gate Avenue
7 San Francisco, CA 94102

8 Payment of stipulated penalties shall be accompanied by transmittal correspondence that
9 specifies that the payment is for stipulated penalties due under this Decree and shall reference
10 DOJ No. 90-5-1-1-08427 and the case name and number, and by notice to the United States as
11 provided in Section XIII (Notices).

12 30. Defendants shall, as directed by CDFG in its demand, pay stipulated
13 penalties owing to CDFG by certified or cashier's check in the amount due, payable to the
14 California Department of Fish and Game. The check shall reference the "Kinder Morgan Spills"
15 and reflect that it is a payment to the Fish and Wildlife Pollution Account. Payment of stipulated
16 penalties shall be accompanied by transmittal correspondence stating that any such payment is
17 for stipulated penalties due under this Consent Decree and shall reference the case name and
18 number. The check shall be sent by certified mail to:

19
20 State of California Department of Fish and Game
21 Office of Spill Prevention and Response
22 Attn: Stephen Sawyer, Assistant Chief Counsel
23 1700 "K" Street, Suite 250
24 Sacramento, CA 95814

25 31. Defendants shall not deduct Stipulated Penalties paid under this Section in
26 calculating federal income tax.
27
28

1 32. If Defendants fail to pay stipulated penalties according to the terms of this
2 Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in
3 28 U.S.C. § 1961, accruing as of the date payment became due.
4

5 33. Subject to the provisions of Section XI of this Consent Decree (Effect of
6 Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree
7 shall be in addition to any other rights, remedies, or sanctions available to Plaintiffs for
8 Defendants' violation of this Consent Decree or applicable law.
9

10 IX. FORCE MAJEURE

11 34. A "force majeure event" is any event beyond the control of Defendants,
12 their contractors, or any entity controlled by any Defendant that delays the performance of any
13 obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation.
14 "Best efforts" includes anticipating any potential force majeure event and addressing the effects
15 of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any
16 resulting delay to the greatest extent possible. "Force Majeure" does not include any
17 Defendant's financial inability to perform any obligation under this Consent Decree.
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20 35. Defendants shall provide notice verbally or by electronic or facsimile
21 transmission to EPA and CDFG as soon as possible, but not later than 72 hours after the time
22 any Defendant first knew of, or by the exercise of due diligence, should have known of, a
23 claimed force majeure event. Defendants shall also provide written notice, as provided in
24 Section XIII of this Consent Decree (Notices), within seven days of the time any Defendant first
25 knew of, or by the exercise of due diligence, should have known of, the event. The notice shall
26 state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to
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1 prevent or minimize any delay; a schedule for carrying out those actions; and Defendants'
2 rationale for attributing any delay to a force majeure event. Failure to provide verbal and
3 written notice as required by this Paragraph shall preclude Defendants from asserting any claim
4 of force majeure.
5

6 36. If the United States agrees that a force majeure event has occurred, the
7 United States may agree to extend the time for Defendants to perform the affected requirements
8 for the time necessary to complete those obligations. An extension of time to perform the
9 obligations affected by a force majeure event shall not, by itself, extend the time to perform any
10 other obligation. Where the United States agrees to an extension of time, the appropriate
11 modification shall be made pursuant to Section XVI of this Consent Decree (Modification) and
12 is not a material change under that Section.
13
14

15 37. If the United States does not agree that a force majeure event has occurred,
16 or does not agree to the extension of time sought by Defendants, the United States' position shall
17 be binding, unless Defendants invoke Dispute Resolution under Section X of this Consent
18 Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the
19 evidence, that each claimed force majeure event is a force majeure event, that Defendants gave
20 the notice required by Paragraph 35, that the force majeure event caused any delay Defendants
21 claim was attributable to that event, and that Defendants exercised best efforts to prevent or
22 minimize any delay caused by the event.
23
24

25 X. DISPUTE RESOLUTION

26 38. Unless otherwise expressly provided for in this Consent Decree, the
27 dispute resolution procedures of this Section shall be the exclusive mechanism to resolve
28

1 disputes arising under or with respect to this Consent Decree. However, such procedures shall
2 not apply to actions by Plaintiffs to enforce obligations of Defendants under this Consent Decree
3 that have not been disputed in accordance with this Section.
4

5 39. Any dispute subject to dispute resolution under this Consent Decree shall
6 first be the subject of informal negotiations between the United States and Defendants. The
7 dispute shall be considered to have arisen when Defendants send a written notice of dispute, as
8 provided in Section XIII of this Decree (Notices). Such notice of dispute shall state clearly the
9 matter in dispute. The period of informal negotiations shall not exceed twenty-one (21) days
10 from the date the dispute arises, unless that period is modified by written agreement. If informal
11 negotiations are unsuccessful, then Plaintiffs' position shall control unless Defendants file with
12 the court a petition to resolve the dispute within thirty (30) days after the conclusion of the
13 informal negotiation period. In any dispute under this Paragraph, Defendants shall bear the
14 burden of demonstrating that their position clearly complies with this Consent Decree and the
15 CWA, OPA, and any other applicable law, and that Defendants are entitled to relief under
16 applicable law.
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20 40. The invocation of dispute resolution procedures under this Section shall
21 not extend, postpone, or affect in any way any obligation of Defendants under this Consent
22 Decree, not directly in dispute. Stipulated Penalties with respect to the disputed matter shall
23 continue to accrue from the first day of noncompliance, but payment shall be stayed pending
24 resolution of the dispute as provided in Paragraph 39, above. If Defendants do not prevail on the
25 disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII
26 (Stipulated Penalties).
27
28

1 **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

2 41. Effective on KMEP's and SFPPs' performance of their payment
3 obligations set forth in Sections IV, V and VI, this Consent Decree resolves the Defendants'
4 liability for the civil claims of the United States, the People of the State of California, *Ex*
5 *Relatione* the CDFG, SFBRWQCB, and the LRWQCB for the violations alleged in the
6 Complaint filed in this action. Plaintiffs reserve all legal and equitable remedies available to
7 enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to
8 prevent or limit the rights of the United States, the People of the State of California, *Ex Relatione*
9 the CDFG, SFBRWQCB and the LRWQCB, to obtain penalties or injunctive relief under the
10 CWA or under other state or federal laws, regulations or permit conditions, except as expressly
11 specified herein.
12
13
14

15 42. In any subsequent administrative or judicial proceeding as reserved in
16 Paragraph 47 herein initiated by the United States, or the People of the State of California, *Ex*
17 *Relatione* the CDFG, SFBRWQCB, and the LRWQCB relating to the Spills, Defendants shall
18 not assert, and may not maintain, any defense or claim based upon the principles of waiver, res
19 judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any
20 contention that the claims raised by the United States, or the People of the State of California, *Ex*
21 *Relatione* the CDFG, SFBRWQCB, and the LRWQCB in the subsequent proceeding were or
22 should have been brought in the instant case.
23
24

25 43. This Consent Decree is not a permit, or a modification of any permit,
26 under any federal, state, or local laws or regulations. Defendants are responsible for achieving
27 and maintaining complete compliance with all applicable federal, state, and local laws,
28

1 regulations, orders, contracts and permits. Defendants' compliance with this Consent Decree
2 shall be no defense to any action commenced pursuant to said laws, regulations, orders, contracts
3 or permits. Plaintiffs do not, by their consent to the entry of this Decree, warrant or aver in any
4 manner that Defendants' compliance with any aspect of this Consent Decree will result in
5 compliance with provisions of the CWA, or with any other provisions of federal, state, or local
6 laws, regulations, orders, contracts or permits.
7

8
9 44. This Consent Decree does not limit or affect the rights of Defendants or of
10 the United States, the People of the State of California, *Ex Relatione* the CDFG, SFBRWQCB, or
11 the LRWQCB against any third parties that are not party to this Consent Decree, nor does it limit
12 the rights of third parties that are not party to this Consent Decree against Defendants, except as
13 otherwise provided by law.
14

15 45. This Consent Decree shall not be construed to create rights in, or grant any
16 cause of action to, any third parties that are not party to this Consent Decree.
17

18 46. Defendants hereby covenant not to sue and agree not to assert any claims
19 related to the Spills, or response activities in connection with the Spills, against the United
20 States, the CDFG, SFBRWQCB, and the LRWQCB pursuant to the CWA, OPA, or any other
21 federal law, state law, or regulation including, but not limited to, any direct or indirect claim for
22 reimbursement from the Oil Spill Liability Trust Fund, or pursuant to any other provision of law.
23

24 47. This Consent Decree is without prejudice to the rights, if any, of the
25 United States, the CDFG, SFBRWQCB, and the LRWQCB against Defendants with respect to
26 all matters other than those expressly set forth in Paragraph 41 of this Consent Decree, including,
27 but not limited to, the following:
28

1 A. claims based on a failure of Defendants to meet a requirement of
2 this Consent Decree;

3 B. any and all criminal liability;

4 C. past, present, or future releases, discharges, or discharges of oil
5 other than the Spills described in the Complaint;

6 D. reimbursement for any disbursements from the Federal Oil Spill
7 Liability Trust Fund arising from the Spills or any other related incident, pursuant to OPA,
8 including for subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715;

9 E. any reasonable and previously unreimbursed removal and
10 monitoring costs (except monitoring costs for Donner) incurred by the CDFG after the Effective
11 Date of this Consent Decree, in connection with the Spills;

12 F. any potential future claims for cleanup, remediation, and Natural
13 Resource damages based on oil in the environment from the Oakland Discharge that is causing or
14 threatens to cause the release into waters of the United States a quantity oil that may be harmful
15 as that phrase is defined at 40 C.F.R. § 110.3, or causing injuries to Natural Resources unknown
16 to Plaintiffs as of the Effective Date of this Consent Decree;

17 G. any potential future claims for cleanup, remediation, and Natural
18 Resource damages based on oil in the environment from the Donner Discharge remaining in the
19 event of the failure of the natural attenuation remedy, as provided in the Soil, Sediment, and
20 Water Monitoring Plan for the Kinder Morgan Donner Pass Petroleum Release, dated February
21 8, 2006, prepared by CDFG.

1 H. any proceedings against Defendants in this action or in a new
2 action seeking recovery of damages to Natural Resources resulting from the Spills based on: (1)
3 conditions with respect to the Spills unknown to the United States or the State as of the date of
4 lodging of this Consent Decree that contribute to the injury to, destruction of, or loss of natural
5 resources; or (2) new information received by the United States or the State after the date of
6 lodging of this Consent Decree that indicates there is injury to, destruction of, or loss of
7 resources of a type or magnitude unknown to the United States as of the date of execution of this
8 Consent Decree.
9
10

11 XII. COSTS

12 48. The Parties shall bear their own costs in this action, including attorneys'
13 fees, except that the Plaintiffs shall be entitled to collect costs, including reasonable attorneys'
14 fees, incurred in any action necessary to collect any portion of the civil penalty or any stipulated
15 penalties due but not paid by Defendants.
16

17 XIII. NOTICES

18 49. Unless otherwise specified herein, whenever notifications, submissions, or
19 communications are required by this Consent Decree, they shall be made in writing and
20 addressed as follows:
21

22 As to the United States:
23

24 As to the U.S. Department of Justice:

25 Angela O'Connell (re: DOJ No. 90-5-1-1-08427)
26 Environmental Enforcement Section
27 Environment and Natural Resources Division
28 U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

1 As to EPA:

2 J. Andrew Helmlinger
3 Attorney Advisor
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street (ORC-3)
6 San Francisco, CA 94104

7 To receive verbal notification as required by this Decree: 415/972-3904

8 As to the DOI:

9 Charles McKinley
10 Assistant Field Solicitor
11 1111 Jackson Street
12 Suite 735
13 Oakland, CA 94607

14 As to NOAA:

15 Katherine Pease
16 Senior Counselor for Natural Resources
17 Office of General Counsel
18 501 W. Ocean Boulevard, Suite 4470
19 Long Beach, CA 90802-4213

20 As to CDFG:

21 Katherine Verrue-Slater
22 Staff Counsel III
23 Stephen Sawyer
24 Assistant Chief Counsel
25 Department of Fish and Game
26 Office of Spill Prevention and Response
27 1700 "K" Street, Suite 250
28 Sacramento, CA 95814

29 As to the SFBRWQCB:

30 Yuri Won
31 Staff Counsel III
32 State Water Resources Control Board
33 c/o San Francisco Bay Regional Water Quality Control Board
34 1515 Clay Street, Suite 1400
35 Oakland, CA 94612

1 As to the LRWQCB:

2 David Coupe
3 Staff Counsel
4 State Water Resources Control Board
5 1001 I Street, 22nd Floor
6 Sacramento, CA 95814

7 As to Defendants:

8 Ronald McClain
9 Vice President, Products Pipelines
10 Kinder Morgan Energy Partners
11 One Allen Center, Suite 1000
12 500 Dallas
13 Houston, TX 77002

14 David R. DeVeau
15 Vice President, Deputy General Counsel
16 Kinder Morgan Energy Partners
17 One Allen Center, Suite 1000
18 500 Dallas
19 Houston, TX 77002

20 Barry R. Ogilby
21 Cooper, White & Cooper LLP
22 1333 N. California Blvd., Suite 450
23 Walnut Creek, CA 94596

24 50. Any Party may, by written notice to the other Parties, change its designated
25 notice recipient or notice address provided above.

26 51. Notices submitted pursuant to this Section shall be deemed submitted
27 upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the
28 Parties in writing.

XIV. EFFECTIVE DATE

52. The Effective Date of this Consent Decree shall be the date on which this
Consent Decree is entered by the Court.

1 **XV. RETENTION OF JURISDICTION**

2 53. The Court shall retain jurisdiction over this case until termination of this
3
4 Consent Decree, for the purpose of resolving disputes arising under this Decree or entering
5 orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVI
6 (Modification), or effectuating or enforcing compliance with the terms of this Decree.

7 **XVI. MODIFICATION**

8
9 54. The terms of this Consent Decree may be modified only by a subsequent
10 written agreement signed by all the Parties. Where the modification constitutes a material
11 change to any term of this Decree, it shall be effective only on approval by the Court.

12 **XVII. TERMINATION**

13
14 55. After Defendants have completed performance of their obligations
15 required by this Decree, including payments under Sections IV, V and VI of this Decree, any
16 accrued Stipulated Penalties under Section VIII, and Injunctive Relief under Section VII, and no
17 sooner than five (5) years after the Effective Date of this Consent Decree, Defendants may
18 submit to Plaintiffs in writing a request for termination, stating that Defendants have satisfied
19 those requirements, together with all necessary supporting documentation.

20
21 56. If the Plaintiffs agree that the Defendants have satisfied the requirements
22 of this Consent Decree, the United States shall file a motion or a joint stipulation for termination
23 of the Decree. Plaintiffs may agree to terminate the Decree without any request from
24 Defendants.

25
26 57. If the Plaintiffs do not agree with Defendants that Defendants have
27 satisfied the requirements of this Consent Decree, the Defendants may invoke Dispute Resolution
28

1 under Section X of this Decree. However, Defendants may not seek Dispute Resolution of any
2 dispute pursuant to this Section until ninety (90) days after service of its Request for
3 Termination.
4

5 **XVIII. PUBLIC PARTICIPATION**

6 58. This Consent Decree shall be lodged with the Court for a period of not less
7 than thirty (30) days for public notice and comment, consistent with the procedures set forth in
8 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the
9 comments regarding the Consent Decree disclose facts or considerations indicating that the
10 Consent Decree is inappropriate, improper, or inadequate. Defendants agree not to oppose entry
11 of this Consent Decree by the Court or to challenge any provision of the Decree, unless the
12 United States has notified Defendants in writing that it no longer supports entry of the Decree.
13
14 Defendants consent to entry of this Consent Decree without prior notice.
15

16 **XIX. SIGNATORIES/SERVICE**

17 59. The Assistant Attorney General for the Environment and Natural
18 Resources Division of the Department of Justice, on behalf of the United States, and each
19 undersigned representative of the People of the State of California, *Ex Relatione* the CDFG,
20 SFBRWQCB, LRWQCB and Defendants certifies that he or she is fully authorized to enter into
21 the terms and conditions of this Consent Decree and to execute and legally bind the Party he or
22 she represents to the terms of this Decree.
23
24

25 60. This Consent Decree may be signed in counterparts, and such counterpart
26 signature pages shall be given full force and effect.
27
28

1 61. Defendants agree to accept service of process by mail with respect to all
2 matters arising under or relating to this Consent Decree and to waive the formal service
3 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local
4 Rules of this Court including, but not limited to, service of a summons.
5

6 **XX. INTEGRATION**

7 62. This Consent Decree constitutes the final, complete, and exclusive
8 agreement and understanding among the Parties with respect to the settlement embodied in the
9 Decree and supersedes all prior agreements and understandings, whether verbal or written.
10

11 **XXI. FINAL JUDGMENT**

12 63. On approval and entry of this Consent Decree by the Court, this Consent
13 Decree shall constitute a final judgment between the Plaintiffs and Defendants.
14

15 64. The Court finds that there is no just reason for delay and therefore enters
16 this judgment as a final judgment.
17

18 This Consent Decree is dated and entered this _____ day of _____,
19
20 2007.

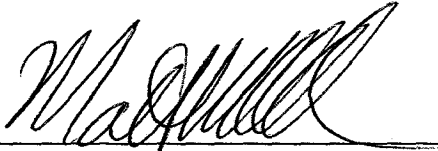
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23 _____
24 UNITED STATES DISTRICT JUDGE

25 Eastern District of California
26
27
28

1 Signature Page to Consent Decree

2 FOR PLAINTIFF UNITED STATES OF AMERICA:

3
4 Date: 5/10/07


5
6 MATTHEW J. McKEOWN
7 Acting Assistant Attorney General
8 Environment and Natural Resources Division
9 United States Department of Justice
10 P.O. Box 7611
11 Washington, D.C. 20044-7611

12 Date: _____

13
14 ANGELA O'CONNELL
15 Trial Attorney
16 Environmental Enforcement Section
17 Environment & Natural Resources Division
18 U.S. Department of Justice
19 301 Howard Street, Ste. 1050
20 San Francisco, CA 94105
21 Tel: 415/744-6485
22 Fax: 415/744-6476
23
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1 Signature Page to Consent Decree

2 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

3
4 Date: _____

5 United States Attorney
6 Eastern District of California
7

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9 _____
10 ROBERT WRIGHT
11 Assistant United States Attorney
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1 Signature Page to Consent Decree

2 FOR THE ENVIRONMENTAL PROTECTION AGENCY:

3
4 Date: _____

5 _____
6 WAYNE NASTRI
7 Regional Administrator
8 U.S. Environmental Protection Agency, Region IX
9 San Francisco, CA

10 Of Counsel:

11 Date: _____

12 _____
13 J. ANDREW HELMLINGER
14 Attorney Advisor
15 U.S. Environmental Protection Agency, Region IX
16 75 Hawthorne Street, ORC-3
17 San Francisco, CA 94104
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1 Signature Page to Consent Decree

2 FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR:

3
4 Date: _____

5 _____
6 DANIEL G. SHILLITO
7 Regional Solicitor
8 2800 Cottage Way
9 Sacramento, California 95825

8 Of Counsel:

9 Date: _____

10 _____
11 Charles McKinley
12 Office of the Field Solicitor
13 1111 Jackson Street, Suite 735
14 Oakland, California 94607

1 Signature Page to Consent Decree.

2 FOR THE ENVIRONMENTAL PROTECTION AGENCY(continued):

3
4 Date: _____

5 _____
6 GRANTA Y. NAKAYAMA
7 Assistant Administrator for Office of
8 Enforcement and Compliance Assurance
9 U.S. Environmental Protection Agency
10 Washington, D.C.

11 Of Counsel:

12 Date: _____

13 _____
14 CHERYL T. ROSE
15 Senior Attorney
16 Office of Enforcement and Compliance Assurance
17 U.S. Environmental Protection Agency
18 Mail Code 2243A
19 1200 Pennsylvania Ave., NW
20 Washington, D.C. 20460
21
22
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24
25
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1 Signature Page to Consent Decree

2 FOR PLAINTIFF THE CALIFORNIA DEPARTMENT OF FISH AND GAME:

3
4 Date: _____

5 _____
6 LISA CURTIS, Administrator
7 California Department of Fish and Game
8 Office of Spill Prevention and Response
9 1700 K Street, Suite 250
10 Sacramento, CA 95814

11 Of Counsel:

12 Date: _____

13 _____
14 STEPHEN L. SAWYER
15 Assistant Chief Counsel
16 Department of Fish and Game
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1 Signature Page to Consent Decree

2 FOR PLAINTIFF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
3 SAN FRANCISCO BAY REGION:

4 Date: _____

5 _____
6 BRUCE H. WOLFE

7 Executive Officer

8 California Regional Water Quality Control Board,

9 San Francisco Bay Region

10 1515 Clay Street, Suite 1400

11 Oakland, CA 94612

12 Of Counsel:

13 Date: _____

14 _____
15 ANITA E. RUUD

16 Deputy Attorney General

17 California Office of the Attorney General
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19
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1 Signature Page to Consent Decree

2 FOR PLAINTIFF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
3 LAHONTAN REGION:

4 Date: _____

5 _____
6 HAROLD J. SINGER
7 Executive Officer
8 California Regional Water Quality Control Board
9 Lahontan Region
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

10 Of Counsel:

11
12 Date: _____

13 _____
14 ANITA E. RUUD
15 Deputy Attorney General
California Office of the Attorney General

1 Signature Page to Consent Decree

2 FOR DEFENDANT KINDER MORGAN ENERGY PARTNERS, L.P.,

3 By: Kinder Morgan G.P., Inc.
4 its General Partner

5 By: Kinder Morgan Management LLC,
6 the Delegate of Kinder Morgan G.P., Inc.

7 Dated: _____

8 By: _____
9 Name: THOMAS A. BANNIGAN
Title: Vice President

10 FOR DEFENDANT SFPP, L.P.,

11 By: Kinder Morgan Operating
12 L.P. "D", its General Partner

13 By: Kinder Morgan G.P., Inc.
14 its General Partner

15 By: Kinder Morgan Management LLC,
16 the Delegate of Kinder Morgan G.P., Inc.

17 Dated: _____

18 By: _____
19 Name: THOMAS A. BANNIGAN
20 Title: Vice President
21
22
23
24
25
26
27
28